

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

David M. Wambolt,	:
Petitioner,	:
	:
v.	: File No. 2:08 CV 250
	:
Robert Hofman, Commissioner,	:
Vermont Department of Corrections,	:
Respondent.	:

ORDER

The Amended Report and Recommendation of the United States Magistrate Judge was filed March 18, 2009. Petitioner's objections were filed on April 3, 2009.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

After careful review of the file, the Magistrate Judge's Report and Recommendation and the objections, this Court ADOPTS the Magistrate Judge's recommendations in full.

The respondent's motion to clarify (Paper 8) is GRANTED. In addition, the respondent's motion to dismiss (Paper 5) is also GRANTED and petitioner's habeas corpus petition (Paper 4), filed pursuant to 28 U.S.C. § 2254 is **DISMISSED**.

Pursuant to Fed. R. App. P. 22(b), a certificate of appealability is **DENIED** because the petitioner has failed to make a substantial showing of denial of a federal right. Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. See e.g., Flieger v. Delo, 16 F.3rd 878, 882-83 (8th Cir.) cert. denied, 513 U.S. 946 (1994); Sawyer v. Collins, 986 F.2d 1493, 1497 (5th cir.), cert. denied, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal of this matter would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

THIS CASE IS CLOSED.

Dated at Burlington, in the District of Vermont, this 13th day of April, 2009.

/s/ William K. Sessions III
William K. Sessions III
Chief Judge
U.S. District Court